The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. ANH T. NGUYEN, Defendant.	NO. CR10-329JLR **GOVERNMENT'S TRIAL BRIEF**

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Thomas M. Woods and Sunni Y. Ko, Assistant United States Attorneys for said District, respectfully submits its trial brief in this matter.

FACTUAL OVERVIEW

A. The SNAP Program Generally

This case involves the Supplemental Nutrition Assistance Program ("SNAP"), previously known as the "food stamp" program. Under the SNAP program, recipients receive monthly benefits that are loaded onto an electronic benefit transfer card, *i.e.*, an EBT card, which operates much like a debit or gift card. Retailers apply for permission from the Food and Nutrition Service ("FNS") to accept SNAP benefits for payment. Recipients can redeem their benefits by taking their cards into authorized retailers, swiping their cards at an EBT machine, and entering their personally identifiable number.

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The federal government pays for the entire cost of the SNAP program. The states, including the State of Washington, help administer the program. The State of Washington has contracted with JP Morgan Chase to help administer payments under the program. Specifically, JP Morgan Chase is responsible for processing transactions that occur at authorized retailers. In Washington State, all food stamp redemptions involve multiple interstate wires. In particular, after a SNAP card is swiped by a retailer, a wire generally is sent from Washington to Wisconsin to help process the transaction.

SNAP benefits can be used only to purchase eligible food. SNAP benefits cannot be redeemed for cash. 7 C.F.R. § 278.2(a); 7 C.F.R. § 274.7(a). This restriction exists because the SNAP program is not a general welfare program. Rather, the program is designed to allow poor individuals and their families to have enough food to eat. The purpose of the program is thwarted when individuals redeem their benefits for items other than food, particularly if the benefits are redeemed for drugs, alcohol, or cigarettes.

B. The Investigation.

In 2007, the United States Department of Agriculture, Office of Inspector General ("USDA-OIG"), commenced an investigation into food stamp trafficking that was occurring at multiple retailers in Seattle's International District. Agents observed that Anh Nguyen was meeting individuals on the street, and in front of stores, providing cash in exchange for SNAP benefits, with no food exchanging hands. Over the course of the next three years, USDA-OIG wired multiple persons acting in an undercover capacity who purported to be seeking to exchange SNAP benefits for cash. The undercovers conducted a number of transactions with Anh Nguyen. In some instances, Nguyen met the undercover on the street, took their cards, and returned over an hour later with the cards and cash. In other instances, Nguyen met the undercover in a store, took the cards to the register, had the cards run, and provided the undercover with the cards and cash. In all instances, Nguyen provided the undercovers with cash amounting to approximately one half of the transaction amount. For example, she would run a SNAP card for $100, and provide the undercover with $50 in cash.

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As the undercover videos demonstrate, there is overwhelming evidence that Nguyen knew what she was doing was wrong. For example, she asked an undercover investigator whether he was a police officer. She told the investigator that someone at the store had seen him waiting outside, and thought he might be with the FBI. In another transaction, she handed the investigator cash on the street, while pretending to walk in one direction, only to reverse direction a few moments later, after the transfer occurred, while pretending not to acknowledge the investigator. On another occasion, she told an undercover officer to keep quiet and not to point, after he pointed at the store to which they were headed. She frequently exchanged cash with the undercovers in the security of her vehicle, or at the side of the store, to attempt to remain out of the view of others. She frequently ran multiple cards taken from a single individual, even though authorized recipients typically only have one valid card. She also gave the undercovers only approximately fifty cents in cash for every dollar that was redeemed.

At trial, the government intends to present evidence pertaining to the five transactions that are specifically charged in this case, as well as six other transactions that she conducted as part of the same scheme that is charged in the indictment. These transactions, including two additional recorded conversations with Nguyen, are summarized briefly as follows:

1. Charged Transactions

i. October 7, 2008

Nguyen met Bob Bell, an undercover investigator with FNS, on the street, at approximately 11:15 a.m. She told Bell to return around 1:00 p.m. She met Bell around 1:30 p.m. near a bus stop. She asked him, "How much?," to which Bell responded, "Four hundred and two [hundred] fifty." Nguyen responded, "You sure you're not police right." After Bell denied being a police officer, Nguyen took the cards. She returned a few minutes later with the cards and cash. She told Bell not to deal with another particular runner, believed to be Muoi Ly, claiming that Ly "talk[s] too much."

ii. October 9, 2008

Bell spotted Nguyen walking on the street. She took Bell's cards, and told him to return approximately forty minutes later. Bell met Nguyen at that time, and she handed him the cards

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and cash while walking steadily in one direction. After the transfer, she quickly reversed direction, and pretended not to acknowledge Bell as she passed by him.

iii. June 11, 2009

On June 11, 2009, at approximately 2:00 p.m., a confidential informant working for the Seattle Police Department and Officer Nam Nguyen, acting in an undercover capacity, met Nguyen in front of Hop Thanh Supermarket. Nguyen asked them, "You want something?" The informant replied, "I have a food card, can I get cash?" Nguyen then walked to the register, and asked how much the informant wanted, to which the informant responded, "$530." Nguyen then had a cashier run the informant's card twice, once for $300.00, and a second time for $200.00. She provided the informant $250.00 in cash from a fanny pack that she was wearing.[1]

iv. June 18, 2009

Officer Nguyen and the same informant met Nguyen in front of Hop Thanh, and they entered the store together. Nguyen took the informant's card and had the cashier run the card. She then took the undercover and the informant to a different market down the street. She had a cashier at that store run a second card provided by the informant. She provided the informant with $150 in cash. The officer and the informant made plans with Nguyen to return to Hop Thanh later that afternoon. Upon entering the store, the officer and the informant observed Nguyen standing by the cashier, trafficking for two other individuals. She then took another card from the informant, and had the cashier run the card. She provided the informant with $400 in cash. The $550 in total cash that Nguyen provided to the informant amounted to approximately fifty-percent of the transaction amounts.

v. June 3, 2010

Officer Tyrone Davis, acting in an undercover capacity, met Nguyen in front of Hop Thanh. The officer handed Nguyen two undercover cards. Nguyen had a cashier run the cards for approximately $600 total. After the transactions were processed, she took the undercover to the side of the store, and provided him $300 in cash.

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[1] The recording device failed during the transaction. The undercover officer will testify about the transaction at trial.

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2. Uncharged Transactions and Recorded Conversations

i. September 5, 2007

Bell met Nguyen on the street. Nguyen asked Bell to provide her with cards, and asked him not to provide cards to anyone other than her. They talked about possibly doing a deal later in the day, but they did not in fact meet again that day.

ii. September 11, 2007

Bell met Nguyen at a bus stop outside of Mekong Rainier market. He provided her cards, and she went into the store alone. Bell got close to the store entrance, and could see her at the cashier. Nguyen exited the store, returned the cards to Bell and gave him a couple hundred dollars in cash. She told Bell that someone in the store was nervous about Bell because he looked "FBI."

iii. October 10, 2007

Bell met Nguyen at the same bus stop near Mekong Rainier market. She took Bell's cards and went into the market. She left the market and motioned for Bell to meet her in her car, which was parked outside of the market. In the car, she returned the cards to Bell and provided him cash. She told Bell that she liked trafficking at Mekong Rainier compared to other stores because "I get to keep everything."

iv. October 11, 2007

Bell met Nguyen on the street near Hop Thanh. After Bell said he was not feeling well, Nguyen pressed him for a card. Bell gave her a card, and she took it into Hop Thanh, returning with cash.

v. November 6, 2007

Bell met Nguyen on the street in the vicinity of Hop Thanh. Bell provided her nine cards. Nguyen took his cards, instructing Bell not to give cards to anyone else. She returned approximately twenty minutes later, informing Bell that she had drained two of the cards. Nguyen later invited Bell into her car, where she counted over $2000 in cash that she provided to Bell in exchange for his benefits.

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vi. December 5, 2007

Bell met Nguyen on the street in the vicinity of Hop Thanh. Nguyen asked Bell, "How much you got today?" Bell responded that he might get five cards later in the day. Nguyen told Bell that he should only give cards to her. They departed, and Bell met with another runner on the street, providing him cards. Bell later encountered Nguyen on the street. She had learned that Bell had given the other runner cards. She was upset with Bell, telling him, "If you lie to me, keep from me, I make you trouble." She reiterated that Bell was only to provide cards to her.

vii. August 5, 2009

Officer Davis met Nguyen outside of Hop Thanh. They went inside of the store, and met in the back. The officer gave Nguyen two cards and they discussed three previous cards that Nguyen had run for the officer. Nguyen then went to the cashier, and had the two cards run. After the cards were run, she provided the officer with cash.

viii. September 2, 2009

Officer Davis went into Hop Thanh. Another runner, Muoi Ly, conducted a transaction for Davis at the store. Officer Davis exited the store, and met Nguyen, who took him to a store across the street to complete another transaction. While walking to the store, Officer Davis pointed to the store to which they were headed. Nguyen told him to keep quiet and not to point. Officer Davis went into the store, and the cashier took his card, conducting a transaction. Officer Davis then met with Nguyen and Ly on the street and settled the cash that he was owed.

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RELEVANT LAW

The defendant is charged with both wire fraud, in violation of Title 18, United States Code, Section 1343, and SNAP fraud, in violation of Title 7, United States Code, Section 2024(c).

A. Wire Fraud

Section 1343 makes it a crime if any person,

> having devised . . . any scheme or artifice to defraud, or for obtaining money or property by means of false and fraudulent pretenses, representations, or promises transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice . . .

18 U.S.C. § 1343.

According to the Ninth Circuit pattern instructions, "The only difference between mail fraud and wire fraud is that the former involves the use of the mails and the latter involves the use of wire, radio, or television communication in interstate or foreign commerce." Ninth Circuit Model Instruction No. 8.124. The mail fraud instruction thus provides three of the four elements:

> First, the defendant knowingly participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;
>
> Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;
>
> Third, the defendant acted with the intent to defraud; that is, the intent to deceive or cheat.

Ninth Circuit Model Instruction No. 8.121. The fourth element, which is unique to wire fraud, is:

> Fourth, the defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out an essential part of the scheme to defraud.

United States v. Jenkins, 633 F.3d 788, 804 (9th Cir. 2011) (wire fraud elements); Eleventh Circuit Model Instruction OI 51 (2010) (modified).

The government addresses some issues pertaining to these elements below.

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1. Scheme to Defraud

To establish wire fraud, the United States must prove that the defendant schemed to obtain money or property by false representations, deceitful statements or half-truths, or the concealment of material facts. *See generally United States v. Beecroft*, 608 F.2d 753, 757 (9th Cir. 1979); *United States v. Allen*, 554 F.2d 398, 410 (10th Cir. 1977). In order to sustain a conviction, the government must prove sufficient facts to support an inference of a fraudulent scheme. *See generally United States v. Cloud,* 872 F.2d 846, 850 (9th Cir. 1989); *United States v. Toney*, 598 F.2d 1349, 1355-56 (5th Cir. 1979); *United States v. Joyce*, 499 F.2d 9, 22 (7th Cir. 1974). In this case, the scheme to defraud included falsely redeeming food stamp benefits for cash under the false representation that the benefits had been redeemed for eligible food, not cash.

2. Intent to Defraud

The Government must prove that defendant acted with the specific intent to defraud. An intent to defraud may be shown by evidence that the defendant performed an act with the intent to deceive or mislead, often for the purpose of causing an economic loss to another or economic gain to the defendant. *See generally United States v. Benny*, 786 F.2d 1410, 1417 (9th Cir. 1986). Intent to defraud may be proved solely by circumstantial evidence, *United States v. Kessi*, 868 F.2d 1097, 1104 (9th Cir. 1989), and may be inferred from a defendant's statements and conduct, *United States v. Peters*, 962 F.2d 1410, 1414 (9th Cir. 1992) (intent to defraud inferred from defendant's knowledge of numerous customer complaints); *United States v. Dial*, 757 F.2d 163, 170 (7th Cir. 1985) (intent to defraud inferred from evidence that defendant took steps to conceal illegal activities).

Proof of a defendant's awareness of a high probability of fraud, coupled with proof that the defendant avoided learning the truth, can support a conviction for wire fraud. *United States v. Zemek*, 634 F.2d 1159, 1180-81 (9th Cir. 1980); *United States v. Price*, 623 F.2d 587, 592 (9th Cir. 1980); *United States v. McDonald*, 576 F.2d 1350, 1358 (9th Cir. 1978). It is also well settled that "one who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity." *Beecroft*, 608 F.2d at 757; *United States v. Simon*,

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839 F.2d 1461, 1470 (11th Cir. 1988) (salesperson's failure to question suspicious sales pitch "amounts to a reckless indifference to the truth, which supplies the criminal intent necessary to convict").

In this case, the defendant exhibited an intent to defraud in numerous ways, including:

- asking the undercover investigator whether he was a police officer;
- mentioning that a person in the store thought the investigator looked "FBI";
- instructing the undercover not to point at the store to which they were headed;
- providing the undercovers only approximately fifty cents on the dollar for every dollar redeemed;
- conducting cash transfers out of public view either in her car or to the side of the store;
- breaking up a large transaction into multiple smaller transactions by having a single card swiped multiple times;
- taking an undercover's cards to multiple stores rather than running all of the transactions at one store;
- pretending to walk past the undercover investigator while passing the cash, only to double-back in the same direction, pretending not to know the investigator.

3. Use of the Wires

The Government must prove that the defendant caused an interstate wire communication to be used in furtherance of their scheme. The law does not require that the defendant personally cause the mail or wire transmission. *United States v. Jones*, 712 F.2d 1316, 1320 (9th Cir. 1983); *see also United States v. Stein*, 37 F.3d 1407, 1409 (9th Cir. 1994). Rather, it is enough that the defendant knows that a wire will be used in the ordinary course of business or reasonably can foresee such use. *Jones*, 712 F.2d at 1320; *United States v. Bohonus*, 628 F.2d 1167, 1173 (9th Cir. 1980); *United States v. Lothian*, 976 F.2d 1257, 1262-63 (9th Cir. 1992).

It is also well-settled that the mailing or wire communication need not itself contain a false representation to be in furtherance of a scheme to defraud. The Government need only show that the communication was "closely entwined with" or "closely related to" the scheme.

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Benny, 786 F.2d at 1420. Each separate wire communication in furtherance of the scheme to defraud constitutes a separate violation of the wire fraud statute. *United States v. Vaughn*, 797 F.2d 1485, 1493 (9th Cir. 1986); *United States v. Calvert*, 523 F.2d 895, 914 (8th Cir. 1976). As mentioned above, all food stamp transactions conducted in the State of Washington are electronically processed and involve an interstate wire.

4. Aiding and Abetting

In addition to being charged as a principal, the defendant is charged in each wire fraud count with aiding and abetting the wire fraud. A defendant need not personally commit the acts constituting a crime, but may be found guilty of the crime even if she only aids and abets the crime. *See* 18 U.S.C. § 2 (providing that anyone who "aids, abets, counsels, commands, induces or procures" an offense against the United States is punishable as a principle). "An aider and abetter is a person who knowingly and intentionally helps another to commit a crime." *United States v. Cruz-Ventura*, 979 F.2d 146, 149 (9th Cir. 1992). To convict a defendant on a theory of aiding and abetting, the Government must prove that the defendant aided and abetted each element of the offense. *United States v. Jones*, 678 F.2d 102, 105-06 (9th Cir. 1982). In this case, the defendant aided and abetted the individuals who helped process the transactions at the stores.

5. Co-Schemer Liability

Wire fraud requires proof of the existence of a scheme to defraud, which, when more than one person is involved (as is true in this case), is analogous to a conspiracy. *See* Ninth Circuit Model Jury Instruction - 8.101A (Approved 3/2003); *see also generally United States. v. Lothian*, 976 F.2d 1257, 1262 (9th Cir. 1992). The Ninth Circuit has clarified that statements and acts of co-participants in a scheme to defraud are admissible against other participants, just as in a conspiracy charge. *See, e.g.*, *United States v. Stapleton*, 293 F.3d 1111, 1117 (9th Cir. 2002) (collecting cases in context of mail and wire fraud). As noted by the court in *Lothian*, "[l]ike co-conspirators, 'knowing participants in the scheme are legally liable' for their co-schemers' use of the mails or wires." *Id.* at 1263. In this case, the actions are those individuals who processed the transactions at the stores are attributable to the defendant.

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B. SNAP Fraud

Title 7, United States Code, Section 2024(c), provides:

> Whoever presents, or causes to be presented, benefits for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this chapter or the regulations issued pursuant to this chapter, shall be guilty of a felony . . . .

Id. Food stamp benefits cannot be redeemed for cash. *See* 7 C.F.R. § 278.2(a); 7 C.F.R. § 274.7(a). The elements of the offense are:

> First, the defendant presented, or caused to be presented, food stamps for payment or redemption;
>
> Second, the food stamps were received, transferred, or used in a manner not authorized by law or by the Department of Agriculture regulations;
>
> Third, the defendant knew the food stamps were received, transferred, or used in a manner not authorized by law or by the Department of Agriculture regulations; and
>
> Fourth, the value of the food stamps had a value of $100 or more.

In order for the government to meet its burden of proof, it must show that the defendant "knew his conduct to be unauthorized by statute or regulations." *Liparota v. United States*, 471 U.S. 419, 425 (1985) (addressing a related food stamp fraud statute, 7 U.S.C. § 2024(b)). It is not a defense that the defendant did not know that his behavior was illegal, but it is a defense that he did not know the behavior was unauthorized. *Id.* at 425 n.9. As discussed above, there is overwhelming evidence that the defendant knew that her conduct was unauthorized.

EVIDENTIARY ISSUES

The evidentiary issues in this case are best presented by summarizing the issues that will arise with each testifying witnesses.

A. Robert Bell

Robert Bell, the FNS investigator, is expected to testify about the undercover transactions that he conducted with the defendant. He can testify about the defendant's statements because they are statements of a party opponent. *See* Fed. R. Evid. 801(d)(2)(A). He can testify about his own statements in his undercover role because they are not being offered for the truth. *See*

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United States v. Wellington, 754 F.2d 1457, 1464 (9th Cir. 1985); *United States v. Adkins*, 741 F.2d 744 (5th Cir. 1984). Indeed, the statements made by Bell in his undercover role are false. Bell's undercover statements, moreover, are not hearsay because they are statements authorized by the defendant. *See* Fed. R. Evid. 801(d)(2)(C).

The government will offer the undercover video and audio of the transactions that Bell conducted with the defendant. Bell can authenticate the video and audio because he has personally viewed and listened to the videos in preparation for trial, and confirmed that the video and audio are a true and accurate depiction of his interactions with the defendant. *See* *United States v. Lance*, 853 F.2d 1177, 1182 (5th Cir. 1988).

The government will request that the jury be provided a transcript of the conversations between Bell and the defendant because the conversations are difficult at times to hear. In the Ninth Circuit, it generally is appropriate to provide a transcript to the jury as long as (1) the Court resolves any objections to the accuracy of the transcript; (2) the testifying witness independently verified the accuracy of the transcript; and (3) the jury is instructed that the transcript is not evidence, only an aid, and that the audio controls to the extent there is any discrepency between the audio and the transcript. *See generally* *United States v. Booker,* 952 F.2d 247, 250 (9th Cir. 1991). In this case, Special Agent Tillotson prepared a first draft of the transcripts. In advance of trial, Bell will have listened to each of the videos, made changes to the transcripts, and confirmed that the transcripts were true and accurate. The government will provide the defense with both versions of the transcripts. The government will listen to any objections from the defense to the accuracy of any of the transcripts in advance of trial. The government would then present any unresolved objections to the attention of the Court in advance of trial.

Bell will authenticate copies of the undercover cards used in the transactions, as well as some original cards as well. He also will authenticate copies of cash received from the defendant.

Bell will be testifying about two of the charged transactions, as well as two uncharged transactions that he conducted with the defendant. The uncharged transactions are admissible

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because they are part of the scheme to defraud that is charged in the indictment. As several courts have explained, uncharged transactions that are "intrinsic" to the scheme to defraud that is charged in the indictment are admissible to prove the existence of the scheme to defraud, and the defendant's intent to defraud. *See generally United States v. Muscatell*, 42 F.3d 627, 631 (11th Cir. 1995). An uncharged transaction is intrinsic to the scheme to defraud where the conduct is "inextricably intertwined" with the scheme to defraud. *United States v. Soliman*, 813 F.2d 277, 279 (9th Cir. 1987); *see also United States v. Swinton*, 75 F.3d 374, 378 (8th Cir. 1996) (uncharged transactions admissible where the "the collected transactions were all part of a single scheme, or (2) the uncharged transactions were 'so blended or connected, with the one[s] on trial as that proof of one incidentally involves the other [s]'" (quoting *United States v. Bass*, 794 F.2d 1305, 1312 (8th Cir. 1986)).

In this case, the uncharged transactions are clearly part of the same scheme to defraud. The indictment alleges that the scheme continued through 2010. The transactions are nearly identical to the charged transactions: in each transaction, the defendant met an undercover investigator, took his food stamps cards, had the cards run for a particular amount, and returned to the investigator approximately one half of the transaction in cash. The uncharged transactions are admissible to show the scheme to defraud, and to prove the defendant's intent to defraud. *See generally United States v. Dula*, 989 F.2d 772, 778 (5th Cir. 1993) ("In this case, the existence of a scheme to defraud is an element of the offense of wire fraud . . . . Although [the uncharged transaction] was not one of those charged in the indictment, it was relevant to the existence of a scheme and therefore was independently admissible as direct proof of the scheme charged.).

B. Officer Tyrone Davis

Seattle Police Officer Tyrone Davis will testify about one charged undercover transaction that he conducted with the defendant, as well as two other uncharged transactions that he conducted with her. His testimony, and the accompanying video and audio, are admissible for the same reasons as set forth above.

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C. Special Agent Kevin Porter

During the investigation, USDA-OIG maintained a poll camera directed at Hop Thanh. Special Agent Kevin Porter maintained the poll camera data for USDA-OIG. He will introduce small portions of poll camera data showing the defendant engaged in food stamp trafficking with others.

D. William Zidel

William Zidel oversees the SNAP program for JP Morgan Chase. He will testify that the charged transactions involved multiple interstate wires, including an interstate wire from the State of Washington to the State of Wisconsin. He also will authenticate JP Morgan database records that show that the undercover transactions resulted in actual redemptions of food stamp benefits. The records are not hearsay because they are business records. *See* Fed. R. Evid. 803(6).

E. Special Agent Steve Tillotson

Special Agent Tillotson will testify that Washington Employment Security Division records show that Hop Thanh did not report any income for the defendant. (As detailed above, the defendant conducted much of her trafficking at Hop Thanh.) The records are relevant because the lack of any employment income earned by the defendant from Hop Thanh tends to show that she was not a legitimate employee of the store. The records are not hearsay because they are business records accompanied by a Rule 901(11) certification. *See generally United States v. Childs*, 5 F.3d 1328, 1333-34 (9th Cir. 1993).

F. James Trinh

Three of the undercover videos contain short exchanges in Vietnamese. The government is having these exchanges translated by James Trinh, who frequently has appeared as a Vietnamese translator in the Western District of Washington. The government will provide the defense with copies of Mr. Trinh's translations, and will entertain any objections to their accuracy. The government also will bring to the attention of the Court any unresolved objections. Under Ninth Circuit law, the jury should be given copies of the translations, and they

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should be given to the jury for consideration in the jury room. *See generally United States v. Taghipour*, 964 F.2d 908, 909 (9th Cir. 1992).

G. John Sullivan

John Sullivan is a SNAP specialist with over twenty years of experience with the food stamps program. He is expected to testify about the following:

- a brief history of the SNAP/food stamps program
- how retailers obtain authorization to accept food stamp benefits
- the prohibition on using food stamp benefits to obtain cash
- the requirement that food stamps can only be used to purchase eligible food
- what constitutes eligible food that can be purchased with food stamp benefits
- how retailers obtain reimbursement for the redemption of food stamp benefits
- how the food stamps program is funded

The government previously disclosed Mr. Sullivan to the defense as an expert witness to testify about these topics.

H. Des Boucher

Des Boucher helps administer the food stamp program at the state level. He is expected to testify about how the program is administered by the State of Washington.

OTHER TRIAL ISSUES

The government respectfully requests that counsel be permitted to split closing argument, with Sunni Ko delivering the closing argument, and Thomas Woods delivering the rebuttal. Mr. Woods will give the opening statement.

The government will seek the admission of a small portion of Ms. Nguyen's post-arrest statement. The government will address the admissibility of the statement in a separate motion *in limine*.

The defense has moved for a bill of particulars, asking that the government identify the particular regulations that are at issue in the case, as well as the identity of any of Nguyen's co-schemers. The government will address these issues in a response to the defendant's motion within the time period for responding to the motion.

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Finally, the government seized approximately $1600 in cash from Nguyen at the time of her arrest. This sum is named in the indictment as being subject to forfeiture. The government and defense counsel have conferred about this issue, and are working to reach an agreement that would obviate the need for a forfeiture phase of the trial, in the event the defendant is convicted. If an agreement is not reached, the government will submit a supplemental brief and jury instructions pertaining to forfeiture.

DATED this 22nd day of July, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

DATED this 22nd day of July, 2011.

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